

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE ENROLLED ACT No. 358

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-38-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The court may revoke a person's probation if:

- (1) the person has violated a condition of probation during the probationary period; and
- (2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:
 - (A) One (1) year after the termination of probation.
 - (B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

- (1) order a summons to be issued to the person to appear; or
- (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

(c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by



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counsel.

(f) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of the sentence that was suspended at the time of initial sentencing.

(h) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

- (1) order a sanction as set forth in subsection (g); and**
- (2) provide credit for time served as set forth under IC 35-38-2.5-5.**

~~(h)~~ (i) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

- (1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or
- (2) order execution of the sentence that was suspended at the time of the initial sentencing.

(j) If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the petition is filed under subsection (a) after the probation period has expired, the court shall:

- (1) order a sanction as set forth in subsection (i); and**
- (2) provide credit for time served as set forth under IC 35-38-2.5-5.**

~~(j)~~ (k) A judgment revoking probation is a final appealable order.

~~(j)~~ (l) Failure to pay fines or costs required as a condition of probation may not be the sole basis for commitment to the department

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of correction.

~~(k)~~ **(m)** Failure to pay fees or costs assessed against a person under IC 33-9-11.5-6, IC 33-19-2-3(c), or IC 35-33-7-6 is not grounds for revocation of probation.

SECTION 2. IC 35-38-2.5-5, AS AMENDED BY HEA 1806-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) Except as provided in section 5.5 of this chapter, as a condition of probation a court may order an offender confined to the offender's home for a period of home detention lasting at least sixty (60) days.

(b) The period of home detention may be consecutive or nonconsecutive, as the court orders. However, the aggregate time actually spent in home detention must not exceed:

- (1) the minimum term of imprisonment prescribed for a felony under IC 35-50-2; or
- (2) the maximum term of imprisonment prescribed for a misdemeanor under IC 35-50-3;

for the crime committed by the offender.

(c) The court may order supervision of an offender's home detention to be provided by the probation department for the court or by a community corrections program that provides supervision of home detention.

(d) A person's term of confinement on home detention under this chapter is computed on the basis of the actual days the person spends on home detention.

(e) A person confined on home detention as a condition of probation earns credit for time served.

SECTION 3. IC 35-50-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) **Except as otherwise provided in this section**, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction, the person has accumulated two (2) prior unrelated felony convictions. The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if:

- (1) the offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction; or**
- (2) the offense is an offense under IC 9-30-10-16 or**



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IC 9-30-10-17.

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

- (1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and
- (2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

~~(d) However,~~ A conviction does not count for purposes of this subsection, section as a prior unrelated felony conviction if:

- (1) ~~it the conviction~~ has been set aside; or
- (2) ~~it the conviction~~ is one for which the person has been pardoned.

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

~~(e)~~ (f) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

~~(d)~~ (g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

~~(e)~~ (h) The court shall sentence a person found to be a habitual ~~criminal~~ offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 4. IC 35-50-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) A person imprisoned for a crime earns credit time irrespective of the degree of security to which he is assigned. ~~However,~~ **Except as set forth under IC 35-38-2.5.-5,** a person does not earn credit time while on parole or

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probation.

(b) A person imprisoned upon revocation of parole is initially assigned to the same credit time class to which he was assigned at the time he was released on parole.

(c) A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days he spends on parole outside the institution.

SECTION 5. [EFFECTIVE JULY 1, 2001] IC 35-50-2-8, as amended by this act, applies only if the offense for which the state seeks to have the person sentenced as a habitual offender was committed after June 30, 2001.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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SEA 358 — Concur+

